IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

RSA.No. 200 of 2007()

AS.237/2003 of ADDL. DISTRICT COURT-II, KOZHIKODE
OS.715/1999 of PRL.M.C.KOZHIKODE-I
.....

APPELLANT/APPELLANT/PLAINTIFF:

U. RAMAN KUTTY, AGED 51 YEARS,
S/O.MOOTHORAN, PUNERAM KOTTUMMAL,
NANMINDA AMSOM AND DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.MANJERI SUNDERRAJ
SMT.SUSAN JACOB
SRI.B.PREMNATH (E)

RESPONDENTS:

NANMINDA GRAMA PANCHAYATH,
(SPECIAL GRADE) REPRESENTED BY
ITS SECRETARY, NANMINDA AMSOM AND
DESOM, KOZHIKODE TALUK.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO. 427/07 IN R.S.A.200/07

DISMISSED

5/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO. 200 OF 2007

Dated 5th March 2007

J U D G M E N T

Plaintiff in O.S.715/99 on the file of Principal Munsiff court-I, Kozhikode is the appellant. Defendant panchayat is respondent. Appellant filed the suit seeking a decree for injunction restraining respondent from demolishing the compound wall. The suit was filed without sending a notice as mandated under Section 249 of Kerala Panchayat Raj Act. Respondent in the written statement contended that suit is maintainable without sending a notice as provided under Section 249 of Kerala Panchayat Raj Act as urgent relief is to be obtained. Learned Munsiff after framing necessary issues and recording the evidence, dismissed suit holding that suit is not maintainable without a notice under Section 249 of Kerala Panchayat Raj Act. Learned Munsiff also found that appellant did not obtain a license to construct the compound wall and therefore is not entitled to the decree. Appellant challenged the decree and judgment

before District court, Kozhikode in A.S.237/2003. Learned Additional District Judge on re-appreciation of evidence confirmed the findings of learned Munsiff that suit without notice under Section 249 of Kerala Panchayat Raj Act is not maintainable and confirmed the dismissal of suit. But learned District Judge set aside the findings of Munsiff that license is necessary to construct a compound wall as it was found that no such license was necessary. As the suit was not maintainable, appeal was dismissed. It is challenged in this second appeal.

2. Learned counsel appearing for appellant was heard. Learned counsel appearing for appellant submitted that though it was contended before courts below that suit is maintainable even without a notice under Section 249 of Kerala Panchayat Raj Act, the legal position is not disputed. It was submitted that appeal may be admitted to enable appellant to file an application to withdraw the suit and file fresh suit. It is therefore argued that appeal is to be admitted.

3. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in appeal. Only ground on which suit now stands dismissed is non sending of a notice under

Section 249 of Kerala Panchayat Raj Act. Even for getting an emergent relief, no exemption is provided under Section 249 of Kerala Panchayat Raj Act. Learned counsel appearing for appellant conceded the legal position that a notice as provided under the Act is necessary. In such circumstances, no substantial question of law arises in the appeal. It is made clear that dismissal of the suit will not prevent appellant from instituting a proper suit after complying with the provisions of the Kerala Panchayat Raj Act.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.